

1 Thomas R. Malcolm (State Bar No. 39248)
trmalcolm@jonesday.com
2 JONES DAY
3 3 Park Plaza, Suite 1100
Irvine, California 92614
Telephone: (949) 851-3939
4 Facsimile: (949) 553-7539

5 Kevin G. McBride (State Bar No. 195866)
kgmcbride@jonesday.com
6 Steven J. Corr (State Bar No. 216243)
sjcorr@jonesday.com
7 JONES DAY
8 555 S. Flower Street, 50th Floor
Los Angeles, CA 90071
Telephone: (213) 489-3939
9 Facsimile: (213) 243-2539

10 Attorneys for Defendant VIZIO, Inc.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 SONY CORPORATION,

15 Plaintiff,

16 v.

17 VIZIO, INC.,

18 Defendant.
19
20

Case No. CV-08-01135-RGK(FMOx)

**[PROPOSED] VIZIO'S AMENDED
ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS TO SONY'S
AMENDED COMPLAINT**

Date: TBD
Time: TBD
Judge: Hon. R. Gary Klausner
Courtroom: 850

21 Defendant VIZIO, Inc. ("VIZIO"), by and through its counsel, hereby
22 amends its answers to the Amended Complaint for Patent Infringement ("the
23 Amended Complaint") of Plaintiff Sony Corporation ("Sony" or "the Plaintiff") and
24 counterclaims as follows:

25 **THE PARTIES**

26 1. VIZIO admits the allegations of Paragraph 1 of this subsection of the
27 Amended Complaint.
28

1 2. VIZIO admits the allegations of Paragraph 2 of this subsection of the
2 Amended Complaint.

3 **JURISDICTION AND VENUE**

4 3. VIZIO admits that this purports to be an action for patent infringement
5 arising under the patent laws of the United States, but denies any liability
6 thereunder. VIZIO admits that this Court has subject matter jurisdiction over
7 actions arising under the patent laws of the United States, but lacks information
8 sufficient to form a belief regarding whether the Plaintiff has standing to bring this
9 action, and on that basis denies any remaining allegations of Paragraph 1 of this
10 subsection of the Amended Complaint.

11 4. VIZIO denies that it has committed acts of infringement. For the
12 purposes of this litigation only, VIZIO admits that this Court has personal
13 jurisdiction over VIZIO. VIZIO denies any remaining allegations of Paragraph 2 of
14 this subsection of the Amended Complaint.

15 5. VIZIO admits that the minimum requisites for venue under 35 U.S.C.
16 1391(c) exist in this district, but states that venue is more properly established in
17 the District of New Jersey, which would better serve the convenience of the
18 witnesses, the convenience of the parties, and the interests of justice. VIZIO denies
19 any remaining allegations of Paragraph 3 of the Amended Complaint.

20 **THE PATENTS IN SUIT**

21 6. VIZIO admits that U.S. Patent No. 5,434,626 (“the ‘626 patent”) on its
22 face purports to have issued on July 18, 1995, and lists a title of “Display Apparatus
23 Displaying Operation Menu,” but denies that the ‘626 patent was duly and legally
24 issued on that day. VIZIO admits that what purports to be a copy of the ‘626 patent
25 is attached to the Amended Complaint. VIZIO is without knowledge or
26 information sufficient to form a belief regarding any remaining allegations of
27 Paragraph 4 of the Amended Complaint, and on that basis denies those allegations.
28

1 7. VIZIO admits that U.S. Patent No. 5,583,577 (“the ‘577 patent”) on its
2 face purports to have issued on December 10, 1996, and lists a title of “Caption
3 Data Coding/Decoding Systems and Methods That Includes Key Data Indicating
4 Intermediate Levels of Attenuation in the Vicinity of the Caption,” but denies that
5 the ‘577 patent was duly and legally issued on that day. VIZIO admits that what
6 purports to be a copy of the ‘577 patent is attached to the Amended Complaint.
7 VIZIO is without knowledge or information sufficient to form a belief regarding
8 any remaining allegations of Paragraph 5 of the Amended Complaint, and on that
9 basis denies those allegations.

10 8. VIZIO admits that U.S. Patent No. 5,684,542 (“the ‘542 patent”) on its
11 face purports to have issued on November 4, 1997, and lists a title of “Video
12 Subtitle Processing System,” but denies that the ‘542 patent was duly and legally
13 issued on that day. VIZIO admits that what purports to be a copy of the ‘542 patent
14 is attached to the Amended Complaint. VIZIO is without knowledge or
15 information sufficient to form a belief regarding any remaining allegations of
16 Paragraph 6 of the Amended Complaint, and on that basis denies those allegations.

17 9. VIZIO admits that U.S. Patent No. 5,731,847 (“the ‘847 patent”) on its
18 face purports to have issued on March 24, 1998, and lists a title of “Subtitle
19 Encoding/Decoding Method and Apparatus,” but denies that the ‘847 patent was
20 duly and legally issued on that day. VIZIO admits that what purports to be a copy
21 of the ‘847 patent is attached to the Amended Complaint. VIZIO is without
22 knowledge or information sufficient to form a belief regarding any remaining
23 allegations of Paragraph 7 of the Amended Complaint, and on that basis denies
24 those allegations.

25 10. VIZIO admits that U.S. Patent No. 5,751,373 (“the ‘373 patent”) on its
26 face purports to have issued on May 12, 1998, and lists a title of “Television
27 Function Selection Method, Television Receiver and Remove Commander for
28 Television Receiver,” but denies that the ‘373 patent was duly and legally issued on

1 that day. VIZIO admits that what purports to be a copy of the '373 patent is
2 attached to the Amended Complaint. VIZIO is without knowledge or information
3 sufficient to form a belief regarding any remaining allegations of Paragraph 8 of the
4 Amended Complaint, and on that basis denies those allegations.

5 11. VIZIO admits that U.S. Patent No. 6,111,614 ("the '614 patent") on its
6 face purports to have issued on August 29, 2000, and lists a title of "Method and
7 Apparatus for Displaying an Electronic Menu Having Components With Differing
8 Levels of Transparency," but denies that the '614 patent was duly and legally
9 issued on that day. VIZIO admits that what purports to be a copy of the '614 patent
10 is attached to the Amended Complaint. VIZIO is without knowledge or
11 information sufficient to form a belief regarding any remaining allegations of
12 Paragraph 9 of the Amended Complaint, and on that basis denies those allegations.

13 12. VIZIO admits that U.S. Patent Reissue No. 38,055 ("the '055 patent")
14 on its face purports to have issued on April 1, 2003, and lists a title of "Video Data
15 Bus Communication System and Method," but denies that the '055 patent was duly
16 and legally issued on that day. VIZIO admits that what purports to be a copy of the
17 '055 patent is attached to the Amended Complaint. VIZIO is without knowledge or
18 information sufficient to form a belief regarding any remaining allegations of
19 Paragraph 10 of the Amended Complaint, and on that basis denies those allegations.

20 13. VIZIO admits that U.S. Patent Reissue No. 40,468 ("the '468 patent")
21 on its face purports to have issued on August 26, 2008, and lists a title of "Video
22 Data Bus Communication System and Method," but denies that the '468 patent was
23 duly and legally issued on that day. VIZIO admits that what purports to be a copy
24 of the '468 patent is attached to the Amended Complaint. VIZIO is without
25 knowledge or information sufficient to form a belief regarding any remaining
26 allegations of Paragraph 11 of the Amended Complaint, and on that basis denies
27 those allegations.
28

14. VIZIO admits that U.S. Patent No. 6,778,182 (“the ‘182 patent”) on its face purports to have issued on August 17, 2004, and lists a title of “Display Device,” but denies that the ‘182 patent was duly and legally issued on that day. VIZIO admits that what purports to be a copy of the ‘182 patent is attached to the Amended Complaint. VIZIO is without knowledge or information sufficient to form a belief regarding any remaining allegations of Paragraph 12 of the Amended Complaint, and on that basis denies those allegations.

15. VIZIO admits that U.S. Patent No. 6,661,472 (“the ‘472 patent”) on its face purports to have issued on December 9, 2003, and lists a title of “Channel Selection in Digital Television,” but denies that the ‘472 patent was duly and legally issued on that day. VIZIO admits that what purports to be a copy of the ‘472 patent is attached to the Amended Complaint. VIZIO is without knowledge or information sufficient to form a belief regarding any remaining allegations of Paragraph 13 of the Amended Complaint, and on that basis denies those allegations.

16. VIZIO admits that the term “patents-in-suit” is used in the Amended Complaint. VIZIO is without knowledge or information sufficient to form a belief regarding any remaining allegations of Paragraph 14 of the Amended Complaint, and on that basis denies those allegations.

17. VIZIO is without knowledge or information sufficient to form a belief regarding any remaining allegations of Paragraph 15 of the Amended Complaint, and on that basis denies those allegations.

COUNT I

18. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

19. VIZIO denies all the allegations of Paragraph 17 of the Amended Complaint.

20. VIZIO denies all the allegations of Paragraph 18 of the Amended Complaint.

21. VIZIO denies all the allegations of Paragraph 19 of the Amended Complaint.

22. VIZIO denies all the allegations of Paragraph 20 of the Amended Complaint.

23. VIZIO denies all the allegations of Paragraph 21 of the Amended Complaint.

24. VIZIO denies all the allegations of Paragraph 22 of the Amended Complaint.

25. VIZIO denies all the allegations of Paragraph 23 of the Amended Complaint.

COUNT II

26. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

27. VIZIO denies all the allegations of Paragraph 25 of the Amended Complaint.

28. VIZIO denies all the allegations of Paragraph 26 of the Amended Complaint.

29. VIZIO denies all the allegations of Paragraph 27 of the Amended Complaint.

30. VIZIO denies all the allegations of Paragraph 28 of the Amended Complaint.

31. VIZIO denies all the allegations of Paragraph 29 of the Amended Complaint.

32. VIZIO denies all the allegations of Paragraph 30 of the Amended Complaint.

33. VIZIO denies all the allegations of Paragraph 31 of the Amended Complaint.

COUNT III

34. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

35. VIZIO denies all the allegations of Paragraph 33 of the Amended Complaint.

36. VIZIO denies all the allegations of Paragraph 34 of the Amended Complaint.

37. VIZIO denies all the allegations of Paragraph 35 of the Amended Complaint.

38. VIZIO denies all the allegations of Paragraph 36 of the Amended Complaint.

39. VIZIO denies all the allegations of Paragraph 37 of the Amended Complaint.

40. VIZIO denies all the allegations of Paragraph 38 of the Amended Complaint.

41. VIZIO denies all the allegations of Paragraph 39 of the Amended Complaint.

COUNT IV

42. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

43. VIZIO denies all the allegations of Paragraph 41 of the Amended Complaint.

44. VIZIO denies all the allegations of Paragraph 42 of the Amended Complaint.

45. VIZIO denies all the allegations of Paragraph 43 of the Amended Complaint.

46. VIZIO denies all the allegations of Paragraph 44 of the Amended Complaint.

60. VIZIO denies all the allegations of Paragraph 58 of the Amended Complaint.

61. VIZIO denies all the allegations of Paragraph 59 of the Amended Complaint.

62. VIZIO denies all the allegations of Paragraph 60 of the Amended Complaint.

63. VIZIO denies all the allegations of Paragraph 61 of the Amended Complaint.

64. VIZIO denies all the allegations of Paragraph 62 of the Amended Complaint.

65. VIZIO denies all the allegations of Paragraph 63 of the Amended Complaint.

COUNT VII

66. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

67. VIZIO denies all the allegations of Paragraph 65 of the Amended Complaint.

68. VIZIO denies all the allegations of Paragraph 66 of the Amended Complaint.

69. VIZIO denies all the allegations of Paragraph 67 of the Amended Complaint.

70. VIZIO denies all the allegations of Paragraph 68 of the Amended Complaint.

71. VIZIO denies all the allegations of Paragraph 69 of the Amended Complaint.

72. VIZIO denies all the allegations of Paragraph 70 of the Amended Complaint.

73. VIZIO denies all the allegations of Paragraph 71 of the Amended Complaint.

COUNT VIII

74. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

75. VIZIO denies all the allegations of Paragraph 73 of the Amended Complaint.

76. VIZIO denies all the allegations of Paragraph 74 of the Amended Complaint.

77. VIZIO denies all the allegations of Paragraph 75 of the Amended Complaint.

78. VIZIO denies all the allegations of Paragraph 76 of the Amended Complaint.

79. VIZIO denies all the allegations of Paragraph 77 of the Amended Complaint.

80. VIZIO denies all the allegations of Paragraph 78 of the Amended Complaint.

COUNT IX

81. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

82. VIZIO denies all the allegations of Paragraph 80 of the Amended Complaint.

83. VIZIO denies all the allegations of Paragraph 81 of the Amended Complaint.

84. VIZIO denies all the allegations of Paragraph 82 of the Amended Complaint.

85. VIZIO denies all the allegations of Paragraph 83 of the Amended Complaint.

86. VIZIO denies all the allegations of Paragraph 84 of the Amended Complaint.

87. VIZIO denies all the allegations of Paragraph 85 of the Amended Complaint.

COUNT X

88. VIZIO realleges and incorporates herein its admissions and denials of the previous paragraphs of this Answer as if fully set forth herein.

89. VIZIO denies all the allegations of Paragraph 87 of the Amended Complaint.

90. VIZIO denies all the allegations of Paragraph 88 of the Amended Complaint.

91. VIZIO denies all the allegations of Paragraph 89 of the Amended Complaint.

92. VIZIO denies all the allegations of Paragraph 90 of the Amended Complaint.

93. VIZIO denies all the allegations of Paragraph 91 of the Amended Complaint.

94. VIZIO denies all the allegations of Paragraph 92 of the Amended Complaint.

VIZIO'S AFFIRMATIVE DEFENSES

First Affirmative Defense

95. As and for a separate affirmative defense, VIZIO alleges that it does not infringe, induce infringement of, or contributorily infringe any properly construed, valid claim of the ‘626 patent, the ‘577 patent, the ‘542 patent, the ‘847 patent, the ‘373 patent, the ‘614 patent, the ‘055 patent, the ‘468 patent, the ‘182 patent, or the ‘472 patent (“the patents-in-suit”).

1 **Second Affirmative Defense**

2 96. As and for a separate affirmative defense, VIZIO alleges that one or
3 more of the claims of the patents-in-suit is invalid for failing to meet one or more of
4 the conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

5 **Third Affirmative Defense**

6 97. As and for a separate affirmative defense, VIZIO alleges that Sony is
7 barred from recovering damages for failure to provide adequate notice in
8 accordance with 35 U.S.C. § 287.

9 **Fourth Affirmative Defense**

10 98. As and for a separate affirmative defense, VIZIO alleges that the
11 Amended Complaint fails to state any claim on which relief can be granted.

12 **Fifth Affirmative Defense**

13 99. VIZIO presently has insufficient knowledge or information upon which
14 to form a belief as to whether it may have additional affirmative defenses. As such,
15 VIZIO reserves the right to assert additional affirmative defenses in the event
16 investigation or discovery indicates that additional affirmative defenses are
17 appropriate, including, but not limited to, affirmative defenses of estoppel, laches,
18 inequitable conduct, patent misuse, and/or unclean hands.

19 **PRAYER FOR RELIEF FOR VIZIO'S AFFIRMATIVE DEFENSES**

20 WHEREFORE, VIZIO prays for relief as follows:

21 A. That the Plaintiff's Amended Complaint be dismissed with prejudice
22 and that the Plaintiff recover nothing thereon;

23 B. That Sony be required to pay VIZIO's attorneys' fees and expenses
24 pursuant to 35 U.S.C. § 285;

25 C. That Sony be required to pay VIZIO's costs; and

26 D. For such other and further relief as the Court may deem just and fair.

27 **VIZIO'S COUNTERCLAIMS**

28 VIZIO hereby counterclaims as follows:

[illegible]

2
3
4

5
6
7

8
9
0
1
2
3

4
5
6
7
8

90

1

2
3
4
5

100

1 107. The jurisdiction of this Court over counter-defendant SCA is proper
2 because of the business SCA regularly conducts in the State of California, and is
3 specifically proper because, pursuant to various commercial arrangements, SCA
4 places products that infringe VIZIO's Patents into the stream of commerce, which
5 stream is directed at the State of California, including this district, with the
6 knowledge and/or understanding that such products would be sold in the State of
7 California, including this district.

8 108. The jurisdiction of this Court over counter-defendant SEI is proper
9 because of the business SEI's principal place of business in the State of California
10 and it regularly conducts business in California, and is specifically proper because,
11 pursuant to various commercial arrangements, SEI places products which infringe
12 VIZIO's Patents into the stream of commerce, which stream is directed at this
13 district and elsewhere in the State of California, with the knowledge and/or
14 understanding that such products would be sold in this district.

15 109. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400
16 and Fed. R. of Civ. P. 13(a).

17 **VIZIO'S FIRST COUNTERCLAIM**

18 **(Infringement of '096 Patent)**

19 110. VIZIO incorporates by reference the foregoing paragraphs as though
20 fully set forth herein.

21 111. On April 23, 1996, the USPTO issued U.S. Pat. No. 5,511,096 titled
22 "Quadrature Amplitude Modulated Data for Standard Bandwidth Television
23 Channel," (hereafter "the '096 Patent"). A true and correct copy of the '096 Patent
24 is attached hereto as Exhibit A.

25 112. VIZIO is the owner of all rights, title and interest in the '096 Patent,
26 with the full and exclusive right to bring suit to enforce this patent and recover for
27 past infringement.
28

1 113. Upon information and belief, in violation of 35 U.S.C. § 271, counter-
2 defendant Sony has infringed, and is continuing to infringe either literally and/or
3 under the doctrine of equivalents, the '096 Patent by practicing one or more claims
4 of the '096 Patent in the manufacture, use, offering for sale, sale, and/or importation
5 of products having a QAM cable tuner.

6 114. Upon information and belief, in violation of 35 U.S.C. § 271, counter-
7 defendant Sony has infringed, and is continuing to infringe, the '096 Patent by
8 contributing to and/or actively inducing others to infringe one or more claims of the
9 '096 Patent by its manufacture, use, offering for sale, sale and/or importation of
10 products having a QAM cable tuner.

11 115. Upon information and belief, counter-defendant Sony's infringement
12 will continue after service of VIZIO's Amended Answer, Affirmative Defenses and
13 Counterclaims to Sony's Amended Complaint unless enjoined by the Court.

14 116. As a result of Sony's infringement, VIZIO has suffered, and will
15 continue to suffer damages.

16 117. VIZIO is entitled to recover from counter-defendant Sony the damages
17 sustained by VIZIO as a result of Sony's wrongful acts in an amount subject to
18 proof at trial.

19 118. Unless counter-defendant Sony is enjoined by this Court from
20 continuing its infringement of the '096 Patent, VIZIO will suffer additional
21 irreparable harm and impairment of the value of its patent rights and is, therefore,
22 entitled to a preliminary and permanent injunction against further infringement.

23 **VIZIO'S SECOND COUNTERCLAIM**

24 **(Infringement of '761 Patent)**

25 119. VIZIO incorporates by reference the foregoing paragraphs as though
26 fully set forth herein.

27 120. On April 15, 1997, the USPTO issued U.S. Pat. No. 5,621,761 titled
28 "Rotationally Invariant Trellis Coding Incorporating Transparent Binary

1 Convolutional Codes,” (hereafter “the ‘761 Patent”). A true and correct copy of the
2 ‘761 Patent is attached hereto as Exhibit B.

3 121. VIZIO is the owner of all rights, title and interest in the ‘761 Patent,
4 with the full and exclusive right to bring suit to enforce this patent and recover for
5 past infringement.

6 122. Upon information and belief, in violation of 35 U.S.C. § 271, counter-
7 defendant Sony has infringed, and is continuing to infringe either literally and/or
8 under the doctrine of equivalents, the ‘761 Patent by practicing one or more claims
9 of the ‘761 Patent in the manufacture, use, offering for sale, sale, and/or importation
10 of products having a QAM cable tuner.

11 123. Upon information and belief, in violation of 35 U.S.C. § 271, counter-
12 defendant Sony has infringed, and is continuing to infringe, the ‘761 Patent by
13 contributing to and/or actively inducing others to infringe one or more claims of the
14 ‘761 Patent by its manufacture, use, offering for sale, sale and/or importation of
15 products having a QAM cable tuner.

16 124. Upon information and belief, counter-defendant Sony’s infringement
17 will continue after service of VIZIO’s Amended Answer, Affirmative Defenses and
18 Counterclaims to Sony’s Amended Complaint unless enjoined by the Court.

19 125. As a result of Sony’s infringement, VIZIO has suffered, and will
20 continue to suffer damages.

21 126. VIZIO is entitled to recover from counter-defendant Sony the damages
22 sustained by VIZIO as a result of Sony’s wrongful acts in an amount subject to
23 proof at trial.

24 127. Unless counter-defendant Sony is enjoined by this Court from
25 continuing its infringement of the ‘761 Patent, VIZIO will suffer additional
26 irreparable harm and impairment of the value of its patent rights and is, therefore,
27 entitled to a preliminary and permanent injunction against further infringement.
28

1 135. VIZIO is entitled to recover from counter-defendant Sony the damages
2 sustained by VIZIO as a result of Sony's wrongful acts in an amount subject to
3 proof at trial.

4 136. Unless counter-defendant Sony is enjoined by this Court from
5 continuing its infringement of the '887 Patent, VIZIO will suffer additional
6 irreparable harm and impairment of the value of its patent rights and is, therefore,
7 entitled to a preliminary and permanent injunction against further infringement.

8 **VIZIO'S FOURTH COUNTERCLAIM**

9 **(Infringement of '522 Patent)**

10 137. VIZIO incorporates by reference the foregoing paragraphs as though
11 fully set forth herein.

12 138. On April 28, 1998, the USPTO issued U.S. Pat. No. 5,745,522 titled
13 "Randomizer for Byte-Wise Scrambling of Data," (hereafter "the '522 Patent"). A
14 true and correct copy of the '522 Patent is attached hereto as Exhibit D.

15 139. VIZIO is the owner of all rights, title and interest in the '522 Patent,
16 with the full and exclusive right to bring suit to enforce this patent and recover for
17 past infringement.

18 140. Upon information and belief, in violation of 35 U.S.C. § 271, counter-
19 defendant Sony has infringed, and is continuing to infringe either literally and/or
20 under the doctrine of equivalents, the '522 Patent by practicing one or more claims
21 of the '522 Patent in the manufacture, use, offering for sale, sale, and/or importation
22 of products having a QAM cable tuner.

23 141. Upon information and belief, in violation of 35 U.S.C. § 271, counter-
24 defendant Sony has infringed, and is continuing to infringe, the '522 Patent by
25 contributing to and/or actively inducing others to infringe one or more claims of the
26 '522 Patent by its manufacture, use, offering for sale, sale and/or importation of
27 products having a QAM cable tuner.
28

1 142. Upon information and belief, counter-defendant Sony's infringement
2 will continue after service of VIZIO's Amended Answer, Affirmative Defenses and
3 Counterclaims to Sony's Amended Complaint unless enjoined by the Court.

4 143. As a result of Sony's infringement, VIZIO has suffered, and will
5 continue to suffer damages.

6 144. VIZIO is entitled to recover from counter-defendant Sony the damages
7 sustained by VIZIO as a result of Sony's wrongful acts in an amount subject to
8 proof at trial.

9 145. Unless counter-defendant Sony is enjoined by this Court from
10 continuing its infringement of the '522 Patent, VIZIO will suffer additional
11 irreparable harm and impairment of the value of its patent rights and is, therefore,
12 entitled to a preliminary and permanent injunction against further infringement.

13 **VIZIO'S FIFTH COUNTERCLAIM**

14 **(Declaratory Judgment of Noninfringement, Invalidity and**
15 **Unenforceability of U.S. Patent No. 5,751,373)**

16 146. VIZIO incorporates by reference the foregoing paragraphs as though
17 fully set forth herein.

18 147. On May 12, 1998, the USPTO issued U.S. Pat. No. 5,751,373 titled
19 "Television Function Selection Method, Television Receiver and Remote
20 Commander for Television Receiver," (hereafter "the '373 Patent"). A true and
21 correct copy of the '373 Patent is attached hereto as Exhibit E.

22 148. Sony has asserted and continues to assert VIZIO is infringing the '373
23 patent. Sony has placed VIZIO under a reasonable apprehension that VIZIO's
24 products are accused of infringing the '373 patent.

25 149. VIZIO has not and does not infringe, directly or indirectly, any valid
26 and enforceable claim of the '373 patent.

27 150. The '373 patent is invalid, unenforceable and/or void.
28

151. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

152. A judicial declaration is necessary and appropriate so that VIZIO may ascertain its rights regarding the '373 patent.

VIZIO'S SIXTH COUNTERCLAIM

(Declaratory Judgment of Noninfringement, Invalidity and Unenforceability of U.S. Patent No. 6,661,472)

153. VIZIO incorporates by reference the foregoing paragraphs as though fully set forth herein.

154. On December 9, 2003, the USPTO issued U.S. Pat. No. 6,661,472 titled "Channel Selection in Digital Television," (hereafter "the '472 Patent"). A true and correct copy of the '472 Patent is attached hereto as Exhibit F.

155. Sony has asserted and continues to assert VIZIO is infringing the '472 patent. Sony has placed VIZIO under a reasonable apprehension that VIZIO's products are accused of infringing the '472 patent.

156. VIZIO has not and does not infringe, directly or indirectly, any valid and enforceable claim of the '472 patent.

157. The '472 patent is invalid, unenforceable and/or void.

158. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

159. A judicial declaration is necessary and appropriate so that VIZIO may ascertain its rights regarding the '472 patent.

PRAYER FOR RELIEF FOR VIZIO'S COUNTERCLAIMS

WHEREFORE, VIZIO prays for relief on its counterclaims as follows:

A. That counter-defendant Sony be ordered to pay damages adequate to compensate VIZIO for Sony's infringement of the '096 Patent, the '761 Patent, the

1 '887 Patent and the '522 Patent (hereafter "the VIZIO Patents") pursuant to 35
2 U.S.C. § 284;

3 B. That counter-defendant Sony, its officers, agents, employees,
4 representatives and any person acting in concert or in participation with them be
5 enjoined from further infringement of each of VIZIO's Patents pursuant to 35
6 U.S.C. § 283;

7 C. That counter-defendant Sony be ordered to pay attorneys' fees pursuant
8 to 35 U.S.C. § 285 for each of the VIZIO Patents;

9 D. That counter-defendant Sony be ordered to pay prejudgment interest;

10 E. That the Court issue a judgment declaring that VIZIO has not
11 infringed, directly or indirectly, any valid enforceable claim of the '373 patent and
12 the '472 patent;

13 F. That the Court issue a judgment declaring that the claims of the '373
14 patent and the '472 patent are invalid;

15 G. That counter-defendant Sony be ordered to pay all costs associated
16 with this action; and

17 H. That VIZIO be granted such other and additional relief as the Court
18 deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 VIZIO requests a jury trial of any issues triable by jury.

21 Dated: April 21, 2009

22 Respectfully submitted,

23 JONES DAY

24 By: 
25 Steven J. Corr

26 Attorneys for Defendant VIZIO, INC.
27
28

1 **PROOF OF SERVICE**

2 I, Beth A. Marchese, declare:

3 I am a citizen of the United States and employed in Los Angeles County,
4 California. I am over the age of eighteen years and not a party to the within-entitled
5 action. My business address is 555 South Flower Street, 50th Floor, Los Angeles,
6 California 90071. On April 21, 2009, I served a copy of the within document(s):

7 **[PROPOSED] VIZIO'S AMENDED ANSWER, AFFIRMATIVE DEFENSES**
8 **AND COUNTERCLAIMS TO SONY'S AMENDED COMPLAINT**

9 by transmitting via e-mail or electronic transmission the document(s) listed above.

10 I am familiar with the United States District Court, Central District of
11 California, Western Division's practice for collecting and processing electronic
12 filings. Under that practice, documents are electronically filed with the court. The
13 court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the
14 filing party, the assigned judge, and any registered users in the case. The NEF will
15 constitute service of the document. Registration as a CM/ECF user constitutes
16 consent to electronic service through the court's transmission facilities. Under said
17 practice, the following CM/ECF users were served:

18 Kevin P.B. Johnson, Esq. kevinjohnson@quinnemanuel.com
19 Quinn Emanuel Urquhart Oliver & Hedges
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065

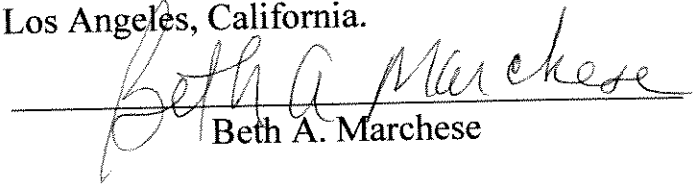
20 Steven M. Anderson, Esq. stevenanderson@quinnemanuel.com
21 Rory S. Miller, Esq. rorymiller@quinnemanuel.com
22 Quinn Emanuel Urquhart Oliver & Hedges
865 South Figueroa St., 10th Floor
Los Angeles, CA 90017

23 On April 21, 2009, I also served a courtesy copy, pursuant to the agreement
24 between the parties, by e-mail to opposing counsel at:

25 sony-vizio@quinnemanuel.com

26 I declare that I am employed in the office of a member of the bar of this court
27 at whose direction the service was made.
28

Executed on April 21, 2009, at Los Angeles, California.


Beth A. Marchese

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28